

HOUSE BILL REPORT

SHB 1067

As Passed House:
March 5, 2009

Title: An act relating to the uniform limited partnership act.

Brief Description: Creating the uniform limited partnership act.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Pedersen and Rodne; by request of Washington State Bar Association).

Brief History:

Committee Activity:

Judiciary: 1/12/09, 1/15/09 [DPS];

General Government Appropriations: 2/10/09, 2/17/09 [DPS(JUDI)].

Floor Activity:

Passed House: 3/5/09, 95-2.

Brief Summary of Substitute Bill

- Replaces the Washington Revised Uniform Limited Partnership Act with the new Washington Uniform Limited Partnership Act.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan, Kelley, Kirby, Ormsby, Roberts and Warnick.

Staff: Edie Adams (786-7180)

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

Majority Report: The substitute bill by Committee on Judiciary be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Darneille, Chair; Takko, Vice Chair; McCune, Ranking Minority Member; Armstrong, Blake, Dunshee, Hudgins, Kenney, Pedersen, Sells, Short, Van De Wege and Williams.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Steve Smith (786-7178)

Background:

Washington first adopted a Uniform Limited Partnership Act in 1945. In 1981 Washington enacted the Revised Uniform Limited Partnership Act (RULPA), which has since been amended a number of times. The Washington RULPA governs the formation and operation of limited partnerships.

A limited partnership is a form of business organization that consists of one or more general partners and one or more limited partners. General partners manage the business and are personally liable for the debts and obligations of the limited partnership. Limited partners are liable for the partnership's debts and obligations only to the extent of their contributions to the partnership, except in limited circumstances where the limited partner participates in control of the business. Limited partnerships are formed by filing a certificate of limited partnership with the Secretary of State.

The RULPA establishes provisions for the creation and operation of limited partnerships that cover: requirements for filing a certificate of limited partnership with the Secretary of State, and procedures for amending the certificate; the rights, duties, liabilities, and relationships of limited partners and general partners; financing of the limited partnership and sharing of profits and losses; withdrawal and distribution rights of partners; assignment rights of partnership interests; and dissolutions and mergers of limited partnerships.

The RULPA is not a stand-alone act. It is linked to and dependent on provisions of the Revised Uniform Partnership Act (RUPA). The RULPA provides that limited partnerships are subject to provisions of the RUPA in areas not covered by the RULPA. Prior to the RUPA's adoption in 1998, the general partnership law also contained links to the RULPA. However, when the RUPA was enacted, the linking language in the RUPA was eliminated.

In 2001 the National Conference of Commissioners on Uniform State Laws adopted a new version of the RULPA, referred to simply as the Uniform Limited Partnership Act (ULPA), even though it is an amendment to the RULPA.

In 2005 the Partnership and Limited Liability Company Law Committee of the Washington State Bar Association's Business Section (Committee) began a review of the 2001 ULPA to determine whether it should be adopted in Washington. The Committee recommends adoption of the 2001 ULPA, with changes appropriate to conform to other business entity statutes in Washington.

Summary of Substitute Bill:

The Washington Uniform Limited Partnership Act (WULPA) is adopted and replaces the Washington Revised Uniform Limited Partnership Act. The WULPA contains changes to many aspects of limited partnership law to update and modernize the statute and to conform the provisions more closely to statutes governing other business entities in Washington. An overview of some of the more substantial changes provided in the act is provided below.

De-linkage from the Revised Uniform Partnership Act.

The WULPA is a stand-alone act that is no longer linked to and dependent on the Revised Uniform Partnership Act (RUPA). As a result, many provisions of the RUPA that applied to the current Revised Uniform Limited Partnership Act are included as new provisions in the WULPA.

General Provisions.

A specific statement is added that a limited partnership is an entity distinct from its partners and that the limited partnership may be organized for any lawful purpose and has a perpetual duration. The general rule is provided that the partnership agreement controls the operation of the limited partnership, except in specific areas of the WULPA that may not be waived by the partnership agreement. The list of non-waivable provisions is similar to those currently provided under the general partnership law.

Circumstances under which a person will be deemed to have constructive notice of a fact concerning a limited partnership are provided and are similar to constructive notice provisions under the general partnership law. Additional constructive notice provisions provide that a person has constructive notice of certain actions or occurrences 90 days after the filing of a record concerning the action or occurrence.

The process and requirements for filing an initial and amended certificate of limited partnership and for filing and correcting other records with the Secretary of State (SOS) are updated, including a provision establishing default rules on the effective time and date of filings. In addition, requirements for the signing of records filed with the SOS are updated and expanded. Limited partnerships must file annual, rather than periodic, reports with the SOS.

Limited Liability Limited Partnership Status.

A limited partnership may opt to become a limited liability limited partnership by including a statement to that effect in its certificate of limited partnership. Status as a limited liability limited partnership provides general partners with a shield from liability for obligations of the limited liability limited partnership.

Limited and General Partners.

Provisions regarding access to information by a partner are modified to expand the list of information that must be provided without a showing of good cause. However, the limited partnership, through the partnership agreement, may impose reasonable restrictions on the availability and use of the information. The circumstances under which a partner has access to other information of the limited partnership are updated and access rights are provided for former partners of the limited partnership.

Provisions regarding when a general partner or a limited partner is dissociated from the limited partnership for cause are established and are similar to provisions on dissociation provided in the RUPA. A limited partner has no right to voluntarily dissociate from the

limited partnership; however the limited partner has the power to dissociate unless eliminated by the partnership agreement. A partner that is dissociated from the limited partnership is no longer entitled to a payout of fair value for the partner's interest in the limited partnership; rather, the partner becomes a transferee of the interest.

Limited partners: The circumstance under which a limited partner may incur liability for limited partnership obligations is eliminated. A limited partner is not liable for any of the limited partnership's obligations, even if the limited partner participates in the management and control of the business.

Specific duties of limited partners are established. A limited partner does not have a fiduciary duty to the limited partnership or another partner. However, a limited partner does have an obligation of good faith and fair dealing in exercising rights and discharging duties under the partnership agreement or under the act.

General partners: Provisions regarding a general partner's powers, rights, duties and obligations are provided and are consistent with existing provisions in the RUPA governing these issues. A general partner in a limited liability limited partnership is not liable for the obligations of the limited liability limited partnership.

Distributions.

Provisions regarding improper distributions of the limited partnership's assets are modified consistent with the approach of the Washington Business Corporations Act (WBCA). A limited partnership may base a determination that a distribution is not improper on financial statements that are based on reasonable accounting practices or on a fair valuation method that is reasonable under the circumstances. Criteria for determining whether the effect of a distribution would make the distribution improper are provided.

Dissolutions.

Circumstances under which a limited partnership may be dissolved are modified. The consent of all partners is no longer required for dissolution. Rather, dissolution is allowed with the consent of all general partners and of limited partners owning a majority of rights to receive distributions. There is no dissolution of a limited partnership following dissociation of a general partner unless the limited partnership has no remaining general partner. In that case, dissolution occurs unless, within 90 days of the dissociation of the last general partner, a new general partner is admitted upon consent of limited partners owning a majority of the rights to receive distributions.

Procedures for barring claims against a dissolved limited partnership are established consistent with the approach in the WBCA. In the case of known claims, the limited partnership may dispose of the claims by providing notice to the claimant of the dissolution. The notice must specify the information required and deadline for submitting a claim. If a claimant fails to file a claim with the limited partnership by the deadline, or fails to bring suit within 90 days if a submitted claim is rejected, the claim is barred. In the case of unknown claims, the limited partnership may dispose of the claims by publishing notice of the

procedure for submitting claims against the limited partnership, and if the claimant does not bring suit to enforce the claim within three years of the notice, the claim is barred.

Conversions.

Limited partnerships are authorized to convert their business to or from: a general partnership, including a limited liability partnership; a limited partnership, including a limited liability limited partnership; a limited liability company; a business trust; a corporation; or any other entity having a governing statute. Requirements for effectuating and filing a conversion, and the effect of a conversion, are provided.

Application.

The act applies to all limited partnerships formed on or after January 1, 2010. Limited partnerships formed prior to January 1, 2010 may elect to be governed by the act as of the act's effective date, except for certain specified provisions that will not apply until July 1, 2010. On July 1, 2010, all partnerships are subject to the act, whether formed before, on, or after January 1, 2010.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 101 through 1304 and 1306 through 1310, which take effect January 1, 2010; and section 1305, relating to repealed sections and sections 1401 through 1416, relating to conforming amendments to correct cross references to repealed sections, which take effect July 1, 2010.

Staff Summary of Public Testimony (Judiciary):

(In support) This bill is the result of many years of work to modernize and update the limited partnership statute. It creates a stand-alone act that is no longer dependent on the General Partnership Act. This will resolve many ambiguities that resulted from the linkage of those two acts. The limited partnership organizational form is not used very often, but it is appropriate for entities that want a strong, centralized management. The bill clearly establishes that limited partnerships are entities separate from the partners. It creates the limited liability limited partnership status and removes the archaic provision that allowed liability for limited partners in some circumstances.

This bill is substantially the same as the uniform act adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL), but with changes to conform with Washington law governing other business entities. Other areas where this bill differs from the NCCUSL act include providing for dissenters' rights in cases of merger of the limited partnership, and including a stronger standard for reducing fiduciary duties owed by general partners. The NCCUSL sees the bill as a uniform act, which will allow case law from other states to be used as a reference in interpreting this act.

(Opposed) None.

Staff Summary of Public Testimony (General Government Appropriations):

(In support) This bill was request legislation from the bar association and from the Uniform Legislation Commission. The bill has roots in the late 19th and early 20th century when there was concern that the federal government was intruding in areas of law that were the purview of the states. A national movement reacting to a lack of uniformity in state law ensued at a national level with commissioners from each state. Commissioners from these meetings brought uniform laws back to their respective states, the most famous of which is the uniform commercial code, which governs sales transactions and secure transactions. The current limited partnership bill is an update to the Uniform Limited Partnership Act from the 1960s and early 1970s. The bill is maintenance of the law to keep it conforming with best practices rather than as a response to a crisis, and is a welcome change for the entities that use limited partnerships. The biggest advantage is that the new limited partnership statute will be a standalone act rather than one with some provisions that were standalone and some that referred out to the general partnership act.

Persons Testifying (Judiciary): Representative Pederson, prime sponsor; and Brian Todd, Washington State Bar Association.

Persons Testifying (General Government Appropriations): Representative Pedersen, prime sponsor.

Persons Signed In To Testify But Not Testifying (Judiciary): None.

Persons Signed In To Testify But Not Testifying (General Government Appropriations): None.